

**Senate Bill No. 1364**

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Passed the Senate August 26, 2014

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*Secretary of the Senate*

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Passed the Assembly August 25, 2014

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2014, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 247.1, 270, 275, 275.6, and 276 of, and to amend and renumber Section 739.3 of, the Public Utilities Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1364, Fuller. Telecommunications universal service programs.

Existing law, the federal Telecommunications Act of 1996, establishes a program of cooperative federalism for the regulation of telecommunications to attain the goal of local competition, while implementing specific, predictable, and sufficient federal and state mechanisms to preserve and advance universal service, consistent with certain universal service principles. The universal service principles include the principle that consumers in all regions of the nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Existing law authorizes the Public Utilities Commission to supervise and regulate every public utility in the state, including telephone corporations, and to fix just and reasonable rates and charges for the public utility. Existing law establishes the state's 6 universal service funds in the State Treasury, including the California High-Cost Fund-A Administrative Committee Fund and the California High-Cost Fund-B Administrative Committee Fund, and provides that moneys in each of the state's universal service funds are the proceeds of rates and are held in trust for the benefit of ratepayers and to compensate telephone corporations for their costs of providing universal service. Moneys in the funds may only be expended to accomplish specified telecommunications universal service programs, upon appropriation in the annual

Budget Act or upon supplemental appropriation. Existing law, until January 1, 2015, requires the commission to develop, implement, and maintain a suitable program to establish a fair and equitable local rate structure aided by universal service rate support to small independent telephone corporations that serve rural areas and are subject to rate-of-return regulation by the commission (the CHCF-A program). Existing law, until January 1, 2015, requires the commission to develop, implement, and maintain a suitable, competitively neutral, and broad-based program to establish a fair and equitable local rate support structure aided by universal service rate support to telephone corporations serving areas where the cost of providing services exceeds rates charged by providers, as determined by the commission (the CHCF-B program).

This bill would delete the provision stating that moneys in each of the state's universal service funds are the proceeds of rates and are held in trust for the benefit of ratepayers and to compensate telephone corporations for their cost of providing universal service and would instead provide that moneys in the funds are held in trust. The bill would encourage the commission, in administering the universal service program funds, and in administering state participation in federal universal service programs, to maximize the amount of federal funding to California participants in the federal programs. The bill would extend the repeal date of the CHCF-A program and CHCF-B program requirements until January 1, 2019. The bill would renumber the statute establishing the programmatic requirements for the CHCF-B program so that it is located in the code adjacent to the statute establishing the California High-Cost Fund-B Administrative Committee Fund, would delete outdated language, and would make other conforming changes.

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Because the CHCF-A program and CHCF-B program, that are extended under the provisions of this bill, are within the act and a decision or order of the commission implements the programs' requirements, the bill would impose a state-mandated local program by expanding the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the

state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 247.1 of the Public Utilities Code is amended to read:

247.1. (a) The Mobile Telecommunications Sourcing Act (Public Law 106-252) was enacted for the purpose of establishing nationwide uniform sourcing rules for the imposition of state and local taxes, fees, and surcharges on mobile telecommunications services. In order to establish a single, uniform sourcing rule, the federal act partially preempted state and local law imposing taxes, fees, and surcharges on a mobile telecommunications services customer whose place of primary use is outside of the state in which the state and local taxes, fees, or surcharges are imposed.

(b) In accordance with the Mobile Telecommunications Sourcing Act, which is incorporated herein by reference, and notwithstanding Sections 275.6, 276.5, 280, 431, 879, and 2881, the surcharges or fees under these sections do not apply to any charges for mobile telecommunications services billed to a customer where those services are provided, or deemed provided, to a customer whose place of primary use is outside this state. Mobile telecommunications services shall be deemed provided by a customer's home service provider to the customer if those services are provided in a taxing jurisdiction to the customer, and the charges for those services are billed by or for the customer's home service provider.

(c) For purposes of this section:

(1) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in Section 216.8, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider, regardless of whether

individual transmissions originate or terminate within the licensed service area of a home service provider.

(2) “Customer” means either (A) the person or entity that contracts with the home service provider for mobile telecommunications services, or (B) if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications service. This paragraph applies only for the purpose of determining the place of primary use. The term “customer” does not include either (A) a reseller of mobile telecommunications service, or (B) a serving carrier under an arrangement to serve the customer outside the home service provider’s licensed service area.

(3) “Home service provider” means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(4) “Licensed service area” means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(5) “Mobile telecommunications service” means commercial mobile radio service, as defined in Section 216.8.

(6) “Place of primary use” means the street address representative of where the customer’s use of the mobile telecommunications service primarily occurs, that must be:

(A) The residential street address or the primary business street address of the customer.

(B) Within the licensed area of the home service provider.

(7) (A) “Reseller” means a provider who purchases telecommunications services from another telecommunications service provider and then resells the services, or uses the services as a component part of, or integrates the purchased services into a mobile telecommunications service.

(B) “Reseller” does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider’s licensed service area.

(8) “Serving carrier” means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider’s or reseller’s licensed area.

(9) “Taxing jurisdiction” means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish,

transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

SEC. 2. Section 270 of the Public Utilities Code is amended to read:

270. (a) The following funds are hereby created in the State Treasury:

(1) The California High-Cost Fund-A Administrative Committee Fund.

(2) The California High-Cost Fund-B Administrative Committee Fund.

(3) The Universal Lifeline Telephone Service Trust Administrative Committee Fund.

(4) The Deaf and Disabled Telecommunications Program Administrative Committee Fund.

(5) The Payphone Service Providers Committee Fund.

(6) The California Teleconnect Fund Administrative Committee Fund.

(7) The California Advanced Services Fund.

(b) Moneys in the funds are held in trust and may only be expended pursuant to this chapter and upon appropriation in the annual Budget Act or upon supplemental appropriation.

(c) The commission, in administering the universal service program funds listed in subdivision (a), and in administering state participation in federal universal service programs, is encouraged, consistent with the state's universal service policies and goals, to maximize the amount of federal funding to California participants in the federal programs.

(d) Moneys in each fund shall not be appropriated, or in any other manner transferred or otherwise diverted, to any other fund or entity, except as provided in Sections 19325 and 19325.1 of the Education Code.

SEC. 3. Section 275 of the Public Utilities Code is amended to read:

275. (a) There is hereby created the California High-Cost Fund-A Administrative Committee, which is an advisory board to advise the commission regarding the development, implementation, and administration of a program to provide for transfer payments to small independent telephone corporations providing local exchange services in high-cost rural and small metropolitan areas

in the state to create fair and equitable local rate structures, as provided for in Section 275.6, and to carry out the program pursuant to the commission's direction, control, and approval.

(b) All revenues collected through surcharges authorized by the commission to fund the program specified in subdivision (a) shall be submitted to the commission pursuant to a schedule established by the commission. The commission shall transfer the moneys received to the Controller for deposit in the California High-Cost Fund-A Administrative Committee Fund. All interest earned by moneys in the fund shall be deposited in the fund.

(c) Moneys appropriated from the California High-Cost Fund-A Administrative Committee Fund to the commission shall be utilized exclusively by the commission for the program specified in subdivision (a), including all costs of the board and the commission associated with the administration and oversight of the program and the fund.

(d) The Legislature finds and declares that, because maintenance of universal public switched telephone network service throughout the state and maintenance of public safety answering points in high-cost areas of the state rely on appropriations from the California High-Cost Fund-A Administrative Committee Fund, maintaining adequate funding levels for the fund is critical to public health and safety.

SEC. 4. Section 275.6 of the Public Utilities Code is amended to read:

275.6. (a) The commission shall exercise its regulatory authority to maintain the California High-Cost Fund-A Administrative Committee Fund program (CHCF-A program) to provide universal service rate support to small independent telephone corporations in amounts sufficient to meet the revenue requirements established by the commission through rate-of-return regulation in furtherance of the state's universal service commitment to the continued affordability and widespread availability of safe, reliable, high-quality communications services in rural areas of the state.

(b) For purposes of this section, the following terms have the following meanings:

(1) "Carrier of last resort" means a telephone corporation that is required to fulfill all reasonable requests for service within its service territory.

(2) “Rate base” means the value of a telephone corporation’s plant and equipment that is reasonably necessary to provide regulated voice services and access to advanced services, and upon which the telephone corporation is entitled to a fair opportunity to earn a reasonable rate of return.

(3) “Rate design” means the mix of end user rates, high-cost support, and other revenue sources that are targeted to provide a fair opportunity to meet the revenue requirement of the telephone corporation.

(4) “Rate-of-return regulation” means a regulatory structure whereby the commission establishes a telephone corporation’s revenue requirements, and then fashions a rate design to provide the company a fair opportunity to meet the revenue requirement.

(5) “Revenue requirement” means the amount that is necessary for a telephone corporation to recover its reasonable expenses and tax liabilities and earn a reasonable rate of return on its rate base.

(6) “Small independent telephone corporations” are rural incumbent local exchange carriers subject to commission regulation.

(c) In administering the CHCF-A program the commission shall do all of the following:

(1) Continue to set rates to be charged by the small independent telephone corporations in accordance with Sections 451, 454, 455, and 728.

(2) Employ rate-of-return regulation to determine a small independent telephone corporation’s revenue requirement in a manner that provides revenues and earnings sufficient to allow the telephone corporation to deliver safe, reliable, high-quality voice communication service and fulfill its obligations as a carrier of last resort in its service territory, and to afford the telephone corporation a fair opportunity to earn a reasonable return on its investments, attract capital for investment on reasonable terms, and ensure the financial integrity of the telephone corporation.

(3) Ensure that rates charged to customers of small independent telephone corporations are just and reasonable and are reasonably comparable to rates charged to customers of urban telephone corporations.

(4) Provide universal service rate support from the California High-Cost Fund-A Administrative Committee Fund to small independent telephone corporations in an amount sufficient to



supply the portion of the revenue requirement that cannot reasonably be provided by the customers of each small independent telephone corporation after receipt of federal universal service rate support.

(5) Promote customer access to advanced services and deployment of broadband-capable facilities in rural areas that is reasonably comparable to that in urban areas, consistent with national communications policy.

(6) Include all reasonable investments necessary to provide for the delivery of high-quality voice communication services and the deployment of broadband-capable facilities in the rate base of small independent telephone corporations.

(7) Ensure that support is not excessive so that the burden on all contributors to the CHCF-A program is limited.

(d) In order to participate in the CHCF-A program, a small independent telephone corporation shall meet all of the following requirements:

(1) Be subject to rate-of-return regulation.

(2) Be subject to the commission's regulation of telephone corporations pursuant to this division.

(3) Be a carrier of last resort in their service territory.

(4) Qualify as a rural telephone company under federal law (47 U.S.C. Sec. 153(44)).

(e) Upon request from the commission, a small independent telephone corporation that receives support from the CHCF-A program shall provide information regarding revenues derived from the provision of unregulated Internet access service by that corporation or its affiliate within that corporation's telephone service territory. The commission shall treat as confidential any information provided pursuant to this subdivision.

(f) The commission shall structure the CHCF-A program so that any charge imposed to promote the goals of universal service reasonably equals the value of the benefits of universal service to contributing entities and their subscribers.

(g) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 5. Section 276 of the Public Utilities Code is amended to read:

276. (a) There is hereby created the California High-Cost Fund-B Administrative Committee, which is an advisory board to advise the commission regarding the development, implementation, and administration of a program to provide for transfer payments to telephone corporations providing local exchange services in high-cost areas in the state to create fair and equitable local rate structures, as provided for in Section 276.5, and to carry out the program pursuant to the commission's direction, control, and approval.

(b) All revenues collected through surcharges authorized by the commission to fund the program specified in subdivision (a) shall be submitted to the commission pursuant to a schedule established by the commission. The commission shall transfer the moneys received to the Controller for deposit in the California High-Cost Fund-B Administrative Committee Fund. All interest earned by moneys in the fund shall be deposited in the fund.

(c) Moneys appropriated from the California High-Cost Fund-B Administrative Committee Fund to the commission shall be utilized exclusively by the commission for the program specified in subdivision (a), including all costs of the board and the commission associated with the administration and oversight of the program and the fund.

SEC. 6. Section 739.3 of the Public Utilities Code is amended and renumbered to read:

276.5. (a) The commission shall develop, implement, and maintain a suitable, competitively neutral, and broad-based program to establish a fair and equitable local rate support structure aided by universal service rate support to telephone corporations serving areas where the cost of providing services exceeds rates charged by providers, as determined by the commission. The program shall be known, and may be cited, as the California High-Cost Fund-B Administrative Committee Fund program or CHCF-B program. The purpose of the program shall be to promote the goals of universal telephone service and to reduce any disparity in the rates charged by those companies. Except as otherwise explicitly provided, this subdivision does not limit the manner in which the commission collects and disburses funds, and does not limit the manner in which it may include or exclude the revenue of contributing entities in structuring the program.

(b) The commission shall structure the CHCF-B program so that any charge imposed to promote the goals of universal service reasonably equals the value of the benefits of universal service to contributing entities and their subscribers.

(c) The commission shall investigate reducing the level of universal service rate support, or elimination of universal service rate support in service areas with demonstrated competition.

(d) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the Public Utilities Commission has the necessary statutory direction to fund the state's universal service programs at the earliest possible time, it is necessary for this act to take effect immediately.









Approved \_\_\_\_\_, 2014

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*Governor*